

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

DUSA PHARMACEUTICALS, INC.,  
a New Jersey corporation; and  
QUEEN'S UNIVERSITY AT  
KINGSTON, a Canadian academic  
organization,

Plaintiffs,

v.

NEW ENGLAND COMPOUNDING  
PHARMACY, INC., a Massachusetts  
corporation,

Defendant.

Civil Action No. 04-12703-NMG

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**JOINT STATEMENT AND PROPOSED DISCOVERY SCHEDULE  
PURSUANT TO LOCAL RULE 16.1**

In accordance with the provisions of Local Rule 16.1 and the Court's Notice of Scheduling Conference, counsel for the Plaintiffs and the Defendant have conferred and hereby submit this Joint Statement and Proposed Discovery Schedule.

**I. Proposed Discovery and Pre-Trial Schedule.**

The parties propose the following pre-trial discovery schedule. The parties anticipate that discovery will be needed on the following subjects: validity, infringement and damages with respect to the patents in issue. The parties agree that discovery should not be conducted in phases.

**A. Initial Disclosures:**

The parties propose that the parties shall complete their initial disclosures by July 29, 2005.

**B. Fact Discovery:**

Plaintiffs propose that all fact discovery shall be completed by April 28, 2006.

The parties anticipate that the Plaintiffs will require a total of twenty (20) complete depositions of fact witnesses and that the Defendant will require a total of twenty (20) complete depositions of fact witnesses. The depositions will be completed by April 28, 2006.

The parties do not at this time anticipate that they will request permission to serve more than 25 interrogatories.

**C. Expert Disclosures/Discovery:**

The designation of expert witnesses and exchange of reports will be simultaneous, only for any area of expert testimony which relates to a claim or affirmative defense in which the disclosing party carries the burden of proof. With respect to areas in which party does not carry the burden of proof, no initial disclosure shall be required and that party may file a rebuttal expert report as provided below. The parties will designate all trial experts and provide opposing counsel with reports from their respective experts pursuant to Fed.R.Civ.P. 26(a)(2) for receipt by fax or overnight courier by May 7, 2006. The parties will provide opposing counsel with rebuttal reports from their respective experts, if any, for receipt by fax or overnight courier by June 4, 2006. The parties will provide opposing counsel with surrebuttal reports from their respective retained experts, if any, for receipt by fax or overnight courier by June 16, 2006.

Depositions of expert witnesses will be completed by July 28, 2006.

D. Motions to Compel Discovery:

Any motions to compel fact discovery will be filed on or before May 12, 2006. Any motions to compel expert discovery will be filed on or before June 30, 2006.

E. Dispositive Motions:

Dispositive motions will be filed on or before August 25, 2006.

F. Joint Trial Memorandum:

The joint trial memorandum will be filed within sixty (60) days of the entry of the final order with respect to the motions to compel discovery, or the dispositive motions, or by November 15, 2006, whichever occurs last.

G. Trial Before a Magistrate Judge:

The Plaintiffs do not consent to the jurisdiction of a Magistrate Judge in this matter. The Defendant, NECP does consent to a trial before a Magistrate Judge.

H. Alternative Dispute Resolution:

The parties believe that mediation may be helpful in resolving this matter.

I. Certification of Counsel Pursuant to Local Rule 16.1(D)(3):


Certification of each party's consultation with counsel concerning budget and alternative

dispute resolution will be filed separately.

Respectfully submitted,

**ATTORNEYS FOR PLAINTIFFS**

6/30/05  
Date

  
\_\_\_\_\_  
Mona Patel  
Holland & Knight LLP  
10 St. James Avenue, 11th Floor  
Boston, Massachusetts 02116

William J. McNichol, Jr.  
Maryellen Feehery  
Valerie Brand  
Reed Smith LLP  
2500 One Liberty Place  
1650 Market Street  
Philadelphia, PA 19103

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**ATTORNEY FOR DEFENDANT**

**DEFENDANT                      NEW                      ENGLAND  
COMPOUNDING PHARMACY, INC.**

6/30/05  
Date

/s/ Daniel M. Rabinovitz  
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Daniel M. Rabinovitz  
(BBO) # 558419  
Menard, Murphy & Walsh LLP  
60 State Street - 34th Floor  
Boston, Massachusetts 02109